

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 407 of 1992

and

CIVIL APPLICATION NO. 1380 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgement?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PRAVINSINH DOLATSINH RANA

Versus

STATE OF GUJARAT

Appearance:

MR AR MAJMUDAR for MR PB MAJMUDAR for Petitioner

MR LR PUJARI, ASSTT.GOVERNMENT PLEADER for Respondent No.1

MR BP GUPTA for MR YN OZA for Respondents Nos.2,3 & 4

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 21/01/99

ORAL JUDGEMENT

The petitioner was appointed as a Multi-purpose Health Worker by an order dated 5.12.1988, Annexure.A filed along with the Special Civil Application wherein his name appears at Sr.No.5. He was to appear before the Selection Committee for regular appointment later on. The petitioner's case is that through an advertisement

dated 7th December 1990, the candidates who were working as Multi-purpose Health Workers like the petitioner were required to appear before the Selection Committee on or before 15th January 1991; however, he being posted at village Itkhala, a remote village, could not come to know about this advertisement and no departmental communication was sent to him for appearing before the Selection Committee on or before 15th January 1991 and, therefore, he could not appear before the Selection Committee. In these circumstances, an order Annexure.E dated 6th January 1992 was passed whereby his services were terminated on the ground that he did not comply with condition no.5 of his appointment order to get through the process of selection. On 20th January 1992, the petitioner preferred the present Special Civil Application before this Court against the order dated 6th January 1992 and also sought a direction from this Court that, in the facts and circumstances of this case, he may be given one more chance to appear before the Selection Committee. On 24th January 1992, the notice was issued by this Court and later on the petitioner sought an amendment in this petition through the proposed amendment dated 14th September 1992 seeking to place on record a Government Circular dated 20th March 1992 and to insert para 8A in the petition so as to take the ground that in terms of this Government Circular dated 20th March 1992, his appointment be regularised as has been done in some other cases. This amendment was allowed by the Court and the same was also carried out. Thereafter, an affidavit-in-reply dated 17th February 1993 had been filed under the signatures of the Under Secretary, Panchayats and Rural Housing Department, State of Gujarat. On 25th February 1993, after hearing both the sides and after taking into consideration the reply which had been filed, Rule was issued by this Court and the following order was passed:

"SPECIAL CIVIL APPLICATION NO. 407 OF 1992

CORAM: M.S.PARIKH, J.

Date: February 25, 1993

O R D E R:

Rule. In so far as Interim relief is concerned, heard. It is submitted by Mr.Nigam Shukla, ld.A.G.P. for the State that every two years the process of selection by District Panchayat Service Selection Committee is being undertaken and now when the same is undertaken the petitioner's case will be considered in case he happens to move an Application. The

petitioner had missed the earlier process because he unfortunately did not come across the public advertisement for appearing in the selection process. It is therefore expected that the next process in all probability must be undertaken in the year 1993-94. It will be open to the petitioner to apply at such process and the said application shall be taken into consideration in accordance with the Rules.

Mr.Nigam Shukla, ld.A.G.P. for Respondent

no.1 waives service of Rule, whereas Mr.A.R.Dave, ld.Advocate for Respondents No.2, 3 & 4 waives service of Rule.

It is further directed that if there is any vacancy available the petitioner shall be accommodated on temporary basis or ad-hoc basis as the case may be in accordance with law.

The hearing of this petition expedited & it is directed to be placed in the month of June 1993.

Sd/-

(M.S.Parikh,J.)"

2. During the pendency of this Special Civil Application, an advertisement was issued about the meeting of the Selection Committee and it has been submitted that at that time the petitioner preferred a Civil Application before this Court seeking a direction against the respondents to allow him to appear before the Selection Committee and this Civil Application No.4664 of 1996 was decided on 24th June 1996 and thereafter the petitioner was called for interview before the Selection Committee. This fact has been incorporated by the petitioner in Civil Application No. 1380 of 1998 wherein the petitioner has further stated that the petitioner had appeared before the Selection Committee after the decision of Civil Application No. 4664 of 1996 as he had been called for interview and he was informed by letter dated 18th/20th September 1996 by respondent no.2 that he had been selected and placed at Sr.No.3 in the select list. This order dated 18th/20th September 1996 has been placed on record as Annexure.A along with Civil Application No.1380 of 1998. The petitioner has raised a grievance that though he had cleared the requisite selection and had been placed at Sr.No.3 in the select list, he was informed by letter dated 8th October 1996 (Annexure.C with Civil Application No.1380 of 1998) by respondent no.4 that even though he had been placed at

Sr.No.3 in the select list, he could not be given appointment on the ground that, according to the Recruitment Rules, he had become age barred. The petitioner has further submitted that, on 4th October 1996, an order had been issued by respondent no.4 appointing other candidates, who had been selected along with the petitioner. This order dated 4th October 1996 has been placed on record at Annexure.D with Civil Application No.1380 of 1998. The petitioner has further stated in this Civil Application No.1380 of 1998 that he was within the age limits at the time when he was appointed and he had appeared before the Selection Committee in terms of the order of this Court which was passed after hearing both the sides and yet he has been deprived of his appointment on the ground of age. The copy of this Civil Application No.1380 of 1998 had been made available to the respondents on 10th February 1998 itself as per the endorsement on this Civil Application. However, so far, no reply whatsoever has been filed to the averments made in this Civil Application by any of the respondents.

3. Learned Counsel for both the sides were heard.

So far as the order dated 6th January 1992 against which the Special Civil Application had been filed cannot be interfered with for the simple reason that, admittedly, the petitioner had not appeared before the Selection Committee in December 1990-January 1991 for the reasons good, bad or worse including the reason that he did not come to know about this advertisement. The order dated 6th January 1992, therefore, cannot be set aside. However, the matter does not end here. The petitioner's further prayer was that he may be given one more chance to appear before the Selection Committee because being posted in a remote area, he could not come to know of the dates of selection earlier. In this background, while issuing Rule on 25th February 1993, the Court had passed an order protecting the petitioner's prospects and this order dated 25th February 1993 was passed by the Court after hearing both the sides. Now, it is the admitted position that the petitioner appeared before the Selection Committee in 1996 under the orders of this Court; it is also not in dispute that he has been selected and had been placed at Sr.No.3 in the select list in 1996; it is also not in dispute that at the time of his initial appointment in 1988 and at the time when he filed the petition before this Court, he was within the age limits; it is also clear from the order Annexure.D with Civil Application No.1380 of 1998 that as many as eight candidates were appointed by this order dated 4th October 1996 on the basis of the same selection

in which the petitioner was placed at Sr.No.3. It is, therefore, obvious that while the candidates who were even at a lower position than the petitioner in the same select list have been appointed in 1996 while the petitioner has been denied the appointment on the ground that he had become over age by this time. The facts as aforesaid are so eloquent to consider that the petitioner has not been treated fairly inasmuch as he could not be deprived of the fruits of the selection at which he was selected and in which he had appeared during the pendency of this Special Civil Application in terms of the order passed by the Court after hearing both the sides. If the candidates at lower position than the petitioner have been appointed, the petitioner could not have been deprived on the ground that while the petition was pending before this Court, he has become over age. Once, the petitioner is given a further chance to appear in the selection in terms of this Court's order dated 25.2.1993 with the expectation that next selection will be held in 1993-94, merely because selections were held in 1996, he can't be denied the benefit of the selection on the ground that he had now become over age. Aging is a process which no one can stop. The petitioner has done all that was in his control. He had also approached the Court well in time. In the facts and circumstances of this case, this Court finds that the petitioner certainly deserves to be considered for appointment on the basis of his being placed at Sr.No.3 in the select list in the year 1996 and his name ought to have been included in the order at Annexure.B dated 4th October 1996 at appropriate place on the basis of his selection.

4. This Special Civil Application, therefore, partly succeeds. The respondents are directed to consider inclusion of the petitioner's name in the appointment order dated 4th October 1996 on the basis of the select list in which he was placed at Sr.No.3 and on the basis of which the aforesaid order dated 4th October 1996 was issued and thereafter allow the petitioner to join as Multi-purpose Health Worker at the earliest possible opportunity, but in no case, later than 1st February 1999 and it is further ordered that the petitioner shall be entitled to all consequential benefits except the financial benefits for the period prior to 1st February 1999. For all other purposes, the petitioner will be treated as if he was appointed on 4th October 1996. This Special Civil Application is partly allowed as above and the Rule is also made absolute in the terms as aforesaid. No order as to costs.

5. In view of the order passed as above in the main

Special Civil Application, no orders are required to be passed in the Civil Application No.1380 of 1998 and the same is disposed of accordingly, but this Civil Application No.1380 of 1998 shall form part of the record of Special Civil Application No.407 of 1992.

sreeram.